HONOURABLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE R. SUBHASH REDDY

WRIT APPEAL No.2405 OF 2005

Between:

B. Rajagopala Krishnaiah, S/o. Late Papaiah (died)

Rep. by his legal heirs & others

.. Appellants

AND

The District Collector, Krishna,

Chilakalapudi, Machilipatnam,

Krishna District & two others

.. Respondents

::JUDGMENT::

Counsel for the appellants :Mr.G. Dharma Rao

Counsel for the Respondents :G.P. for Social Welfare

-

12th December, 2005

-

-

-

-

-

-

(per G.S. Singhvi, CJ)

Heard the learned counsel for the parties.

Feeling dissatisfied with the partial relief granted by the learned Single Judge, who allowed W.P. No.6792 of 1996 filed by them and quashed the acquisition of their land with a direction to the respondents to hold enquiry under Section 5A of the Land Acquisition Act, 1894 (for short 'the Act') within a maximum period of 30 days from the date of receipt of his order, the appellants have preferred this appeal.

A perusal of the record shows that the appellants had challenged the acquisition of their land mainly on the ground that notifications under Sections 4(1) and 6 of the Act were issued without application of mind and that there could be no justification, legal or otherwise, for issuance of notification under Section 6 of the Act even before publication of notification under Section 4(1) of the Act. Another ground taken by them was that enquiry under Section 5A of the Act had not been held.

Learned Single Judge did not accept the appellants' challenge to the notifications issued under Sections 4(1) and 6 of the Act, but upheld their plea that the land in question could not have been acquired without holding enquiry under Section 5A of the Act.

In the appeal, the appellants have reiterated their challenge to the notifications issued under Sections 4(1) and 6 of the Act by contending that order dated

7.3.1986 passed by the learned Single Judge in W.P. No.4907 of 1983 whereby he quashed the proceedings of acquisition initiated by the respondents in 1983 operates as *res judicata,* against the fresh acquisition. Another plea of the appellants is that the competent authority could not have been issued notification under Sections 4(1) and 6 of the Act simultaneously.

At the commencement of the hearing, we asked
Sri K. Muralidhar Reddy, learned Government Pleader for Social Welfare, as to why the appellants should not be given an opportunity to raise all legally permissible objections against the acquisition of their land including the one that the notifications issued under Sections 4(1) and 6 of the Act are *ultra vires* to the statute. In reply, the learned Government Pleader fairly submitted that the appellants may be given opportunity to raise all objections to the acquisition of their land including those relating notifications issued under Section 4(1) and Section 6 of the Act.

Notwithstanding the above stated fair statement made by the learned Government Pleader, learned counsel appearing for the appellants Sri G. Dharma Rao, argued that the Court should quash notifications issued under Sections 4(1) and 6 of the Act by applying the principle of
res judicata. He emphasized that order dated 7.3.1986 passed by the learned Single Judge in W.P. No.4097 of 1983 should be treated as *res judicata.*

We have carefully gone through the order dated
7-3-1986 vide which the learned Single Judge had quashed the acquisition proceedings essentially on the ground of
non-publication of notification issued under Section 4(1) of the Act, and are convinced that the said order cannot operate as *res judicata* against fresh acquisition proceedings subject, of course, to the compliance of the relevant statutory provisions. Order dated 7.3.1986 passed in W.P. No.4097 of 1983 does not contain any finding that the appellants were small farmers and their land could not be acquired for any public purpose in accordance with the provisions of the Act. Therefore, that order cannot be treated as *res judicata* to

the fresh acquisition of the appellants land and the proceedings initiated by the respondents cannot be nullified on that ground.

At the same time, we are convinced that it will be in the interest of justice to grant liberty to the appellants to raise all objections in the inquiry to be conducted by the competent authority under Section 5A of the Act.

In the premise aforesaid, the appeal is disposed of with the direction that in the inquiry to be held under Section 5A of the Act, the appellants shall be entitled to raise all legally permissible objections and also challenge the validity and *vires* of the notifications issued under Sections 4(1) and 6 of the Act.

G.S. SINGHVI, C.J.

12th December, 2005

R. SUBHASH REDDY, J

PV/VTV